BAIL SLIP

The Appellants 1 to 5 herein (viz.) 1. Kannan, 2. Mahesh, 3. Rajendran, 4. Muthu, 5. Mani - Accused 1 to 5 in S.C.No.136 of 1998 on the file of the Principal Sessions Judge, Villupuram were directed to be released on bail, in and by the order of this Court dated 28.10.1999 and made in Crl.M.P.No.8707/99 in C.A.No.806/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2005

CORAM

THE HONOURABLE MR JUSTICE N.DHINAKAR
and
THE HONOURABLE MR JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 806 of 1999

1. Kannan
2. Mahesh
3. Rajendran
4. Muthu
5. Mani ... Appellants/Accused 1 to 5.

Vs

State rep. by
Inspector of Police,
Valavanur Police Station,
Villupuram District. ... Respondent/Complainant
(Cr.No.527/95)

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Prayer: Appeal against the judgment passed by the learned Principal Sessions Judge, Villupuram, in S.C.No.136 of 1998 dated : 15.9.1999.

For Appellant : Mr.K.Asokan, S.C., for
M/s. Gita Asokan.

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor.

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JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM,J)

This appeal has been brought forth from the judgment of the learned Principal Sessions Judge, Villupuram, made in S.C.No.136 of 1998, wherein, the appellants, five in number, along with two others stood charged as follows:-

i.Charge No.1 was framed against A-1 and A-3 to A-7 under Section 147 IPC.
ii.Charge No.2 was framed against A-2 under Section 148 IPC.
iii.Charge No.3 was framed against A-2 to A-4 under Section 302 read with 34 IPC.
iv.Charge No.4 was framed against A-1 and A-5 to A-7 under Section 302 read with 149 IPC.
v.Charge No.5 was framed against A-1 under Section 323 IPC.
vi.Charge No.6 was framed against A-2 under Section 324 IPC.
vii.Charge Nos.7 and 8 were framed against A-4 under Section 323 IPC. (Two counts).
viii.Charge No.9 was framed against A-5 under Section 323 IPC.
ix.Charge Nos.10 and 11 were framed against A-6 under Section 323 IPC. (two counts).
x.Charge No.12 was framed against A-7 under Section 323 IPC.

2. The learned trial Judge found A-1 and A-3 to A-5 guilty under Section 147 IPC. and sentenced each one of them to undergo rigorous imprisonment for a period of one year, while A-2 was found guilty under Section 148 IPC. and awarded rigorous imprisonment for one year. The learned Judge found A-2 to A-4 guilty under Section 302 read with 34 IPC. and sentenced each one of them to undergo life imprisonment, while A-1 and A-5 were found guilty under Section 302 read with 149 IPC. and awarded life imprisonment. The learned trial Judge found A-1 and A-5 guilty under Section 323 IPC. and awarded rigorous imprisonment for a period of six months, while A-2 was found guilty and awarded rigorous imprisonment for a period of one year under Section 324 IPC. The learned trial Judge has also directed that the sentence of imprisonment imposed upon A-1 to A-5 would run concurrently. A-4, who was charged under Section 323 IPC., A-6, who was charged under Sections 147 and 323 (two counts), A-7 , who was charged under Section 302 read with 149 and 323 IPC., were acquitted of the said charges levelled against them by the learned Sessions Judge.

3. The gist of the case of the prosecution, excepting the unnecessary details, can be stated thus:-

i.A-1 to A-7 and P.Ws.1 to 4 belong to Valavanur village. Six months prior to the date of occurrence, the house of the brother of A-1 was mortgaged with the wife of P.W.4 for a sum of Rs.40,000/-. On

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10.8.1995, i.e, on the date of occurrence, the said house was shown to a prospective tenant. At that time, the wife of A-1 told the deceased that the drainage water should not be allowed to pass through their house. In answer to the same, the deceased replied that he would continue to do so. Hence, a quarrel arose between the wife of A-1 and the deceased. At about 11.00 p.m., A-1 to A-4 armed with weapons, came there and attacked the deceased. A-2 attacked the deceased with an iron pipe, while A-3 and A-4 attacked him with sticks. A-2 attacked P.W.1 with iron pipe, while A-1 and A-5 attacked him with sticks. A-6 and A-7 assaulted P.Ws.2 and 4. When the crowd gathered, A-1 to A-7 fled away from the place of occurrence with the weapons of crime. P.W.7 took the deceased and P.Ws.1 to 4, who sustained injuries, to Government Hospital, Villupuram.

ii. At about 11.45 p.m., P.W.10, the doctor, who was on duty at that time, examined the deceased, noted the injuries and has issued the copy of the accident register under Ex.P-11. Thereafter, he examined P.W.1 and has given the copy of the accident register under Ex.P-12. At 00.45 hours on 11.8.1995, the doctor examined P.W.4 and issued Ex.P-13, the copy of the accident register. At about 00.50 hours, he examined P.W.2 and issued Ex.P-14, the copy of the accident register. At 1.00 a.m., the doctor examined A-1 and A-2 in respect of the injuries found on their person and issued Exs.D-1 and D-2, the copies of the accident registers.

iii.P.W.11, the Head Constable attached to Valavanur Police Station, on getting information at about 2.00 a.m. on 11.8.1995 from Villupuram West Police Station, proceeded to the Government Hospital, where he was informed that the deceased and the witnesses were taken to Gipmer Hospital, Pondicherry. Then, he proceeded over there. At 9.30 a.m., P.W.11 obtained the statement of P.W.1 under Ex.P-1, on the strength of which, a case in Crime No.527 of 1995 came to be registered under Sections 147, 148, 326, 323 and 506(2) IPC. Ex.P-15, the printed first information report, was despatched to the Court. P.W.11 examined P.Ws.1 and 2. P.W.11, thereafter, proceeded to the scene of occurrence at about 5.30 p.m. on the very day and made an observation in the presence of two witnesses and prepared the observation mahazar under Ex.P-3 and drew a rough sketch under Ex.P-16. On 11.8.1995 at 6.00 a.m., A-7 was arrested. Further investigation was taken up by P.W.12, the Sub Inspector of Police.

iv.On 13.8.1995, P.W.12 arrested A-1 and A-2. A-2 volunteered to give a confessional statement recorded by the investigating officer and the admissible portion is marked as Ex.P-4, pursuant to which, M.Os.1 and 2, the iron pipe and stick respectively, were recovered under Ex.P-5 mahazar. Further investigation in the case was taken up by P.W.13, Inspector of Police, Valavanur Police Station.

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v.P.W.13, on coming to know about the death of the deceased, altered the crime to one under Section 302 IPC. He proceeded to the mortuary and conducted inquest over the dead body and in the presence of Panchayatdars and witnesses, the inquest report under Ex.P-18 came to be prepared. He also sent a requisition, Ex.P-3, to the doctor for conducting autopsy.

vi.P.W.9, Assistant Professor of Forensic Medicine, Madras Medical College, Madras, conducted autopsy on the body of Subramanian and found the following injuries:-

1) A sutured wound over right fronto-parieto-temporal region 26 cms in length.

2) A sutured wound over left side of fronto-parieto-temporal region 27 cms in length.

3) Part of fronto-tempero-parietal bone absent on both sides (surgically removed).

4) Sub scalp bruise over both parietal and temporal region.

5)A healed lacerated wound over mid parietal regions on right side measuring 4 cms in length.

6)A healed lacerated wound over lower lip on left side 1.5 cm in length.

7)Brown abrasions:

a)on front of left knee 3x1.5 cm;
b)front of middle of right leg 3x1 cm;
c)above left eye brow 3x2 cm;
d)outer canthus of left eye 3x1.5 cm;
e)left side of chin 1.5x1 cm.

8) Sub dural and sub arachnoid haemorrhage over both sides of occipital lobes of cerebellum.

The doctor issued Ex.P-7, the post-mortem certificate, wherein he has given his opinion that Subramanian, the deceased, died of head injuries.

vii.P.W.13, the investigating officer, came to know that A-3 and A-4 surrendered before the Court. On completion of the investigation, the final report was filed before the Committal Court.

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4. The case was committed to the Court of Sessions. On committal, necessary charges were framed. In order to substantiate the charges levelled against the appellants, the prosecution examined 13 witnesses and marked 19 exhibits and two material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. No defence witness was examined. But two documents under Exs.D-1 and D-2, copies of the accident registers in respect of the injuries found on A-1 and A-2, were marked on the side of the defence.

5. On hearing the arguments advanced on either side and on scrutiny of the materials available, the trial Court found the accused guilty and awarded the punishment as referred to above. Hence, the aggrieved accused 1 to 5 have brought forth this appeal.

6. The learned Senior Counsel appearing for the appellants inter alia would submit that there has been an undue and inordinate delay in the registration of the case. The occurrence has taken place at 11.00 p.m. on 10.8.1995, but the case came to be registered on the next day at 9.00 a.m. P.W.11, the Head Constable attached to Valavanur Police Station, who was examined in that regard, has not given any satisfactory explanation and hence, the long delay in registration of the case remains unexplained. The learned counsel would further add that in order to take vengeance against the accused, all the members of the family of A-1, viz., A-2 to A-5, the sons, and A-6, the wife, and A-7, the brother of A-1, have been roped in the case.

7. The second contention of the learned Senior Counsel is that though A-1 and A-2 have sustained injuries at the time of occurrence and Exs.D-1 and D-2 have been marked in respect of the said injuries, they have not been explained properly by the prosecution. The prosecution has made a feeble attempt to explain the said injuries sustained by the accused by stating that at the time of occurrence, the prosecution witnesses pelted stones on the accused and thus, they have sustained injuries. But the injuries sustained by A-1 and A-2 could not have been caused by pelting stones, since, what are noticed in Exs.D-1 and D-2 are lacerations and that too on the vital parts, which could not have been caused by throwing stones. But, this is the case, where the prosecution did not come forward to explain the injuries caused on the accused.

8. Added further, the learned Senior Counsel that, on the strength of the report given by A-1, a case came to be registered by the respondent in Crime No.526 of 1995 and neither the first information report nor the statement has been placed before the lower Court and thus, the lower Court was unable to adjudicate upon the matter properly. According to the learned Senior Counsel, when once the prosecution has admitted the fact that a case came to be

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registered at the instance of the accused, who sustained injuries in the course of the same transaction, duty is cast upon the prosecution to investigate the said case properly to bring home the guilt of the accused. But, the prosecution has suppressed said case and hence, on that ground alone, the entire case of the prosecution should have been rejected.

9.The learned Senior Counsel would further add that there was a contradiction between the evidence of P.Ws.1 and 2 as to the place of occurrence. According to P.W.1, the occurrence has taken place in Subramaniya Koil Street, but according to P.W.2, the occurrence has taken place in Vannara Street. But a perusal of the rough sketch would show that both the streets are at different directions.

10. Apart from that the learned Senior Counsel appearing for the appellants would further add that P.Ws.1, 2 and 4, who have taken to the hospital and examined by the doctor, P.W.10, in respect of the injuries sustained by them, have informed the doctor that number of accused were present at the time of occurrence and they have also armed with knifes, which were used at the time of occurrence, though no corresponding injuries were found. Added further, the learned Senior Counsel that, from the evidence, it could be seen that it is a free fight between the accused party and the other party and thus, in the absence of the first information report registered in the other case on the basis of the complaint given by A-1, the genesis of the occurrence was not made known to the lower Court and under such circumstances, A-1 to A-5, the appellants in this case, are entitled for acquittal.

11. The Court heard the learned Additional Public Prosecutor appearing for the State on the above contentions.

12. It is not in dispute that in the occurrence that took place on 10.8.1995 at 11.00 p.m., the deceased and P.Ws.1, 2 and 4 sustained injuries and they were all taken to the hospital, where the deceased died, pursuant to which, a case came to be registered and subsequently altered to one under Section 302 IPC. Inquest was conducted by the investigating officer during investigation and the dead body was subjected to post-mortem by P.W.7, doctor, and a post-mortem certificate under Ex.P-7 was also marked. All would go to show that Subramaniam died out of homicidal violence. The accused never questioned the fact that Subramaniam died out of homicidal violence either before the lower Court or before this Court and hence, it could be safely concluded that Subramaniam died out of homicidal violence.

13. In order to prove the charges levelled against the accused, the prosecution has brought forth direct evidence through the evidence of P.Ws.1 to 4. It is needless to say, in a case, where the injured witnesses, who had spoken about the death of the deceased, happened to be the relatives of the deceased, their evidence must be subjected to careful scrutiny. On exercise of careful scrutiny, on the evidence of

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P.Ws.1 to 4, who are relatives, the Court has to necessarily find that their evidence is not only discrepant, but also unacceptable.

14. In the instant case, at the time of occurrence, A-1 and A-2 also sustained injuries and in respect of the said injuries, Exs.D-1 and D-2, the copies of the accident registers, have been marked. A perusal of Exs.D-1 and D-2 would clearly show that number of injuries were caused on A-1 and A-2 including lacerated injuries. But the only explanation that was brought forth by the prosecution was that the prosecution witnesses threw stones on the accused in order to prevent the attack. P.W.2, who, according to the prosecution, was an injured witness, would state that at the time of occurrence, they pelted stones on the accused and thus injuries were caused on them. The nature of the injuries found in Exs.D-1 and D-2 would clearly indicate that such injuries, at no stretch of imagination, could have been caused by pelting stones on the accused and in such circumstances, the prosecution witnesses, who were also injured, were not ready to speak about the way, in which, the accused party sustained injuries.

15. According to the prosecution, it was P.W.10, the doctor attached to Government Hospital, Villupuram, who examined P.Ws.1, 2 and 4 and who issued copies of accidents registers, Exs.P-12, P-13 and P-14, in respect of the injuries found on them. A perusal of the said documents would show that they came into existence within a short time of half-an-hour, on the statements made by P.Ws.1, 2 and 4. But they have given different versions to the doctor as to the number of assailants, who were present at the occurrence spot. Apart from that, all of them have stated that the assailants were having knives and attacked them, but no document would indicate that they could have been attacked with knives, which is also pointing to the fact that they have not spoken the truth before the Court.

16. Further, there has been considerable delay in the first information report coming into existence, which has not been properly explained by the prosecution. The occurrence has taken place at about 11.00 p.m. and the police station is situated within a very short distance of 1 km. from the scene of occurrence, but the first information report has come into existence after a delay of about 11 hours. The explanation tendered by the prosecution for such delay cannot be accepted. It is to be pointed out that there was undue and inordinate delay in registering the first information report, and the said delay has not been properly explained by the prosecution, which, in the opinion of the Court, has fatally affected the prosecution case, as rightly pointed out by the learned Senior Counsel appearing for the appellant. The scene of occurrence is also not properly fixed by the prosecution.

17. Admittedly, a case came to be registered by the respondent police on an information given by A-1 and crime number has also been assigned. But neither the first information report nor the statement recorded from the witnesses were placed before the lower Court. But

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the case has been referred as mistake of fact by the investigating officer. Without placing the materials before the lower Court in respect of the other case registered at the instance of A-1 by the respondent, which admittedly, took place during the course of the same transaction, the lower Court could not have found the truth or otherwise of the case. Thus, all the above circumstances create a doubt about the case of the prosecution.

18. The Court is able to find sufficient force in the contention put forth by the learned Senior Counsel for the appellant that in the instant case, where there was a free fight between the accused and the other party, the genesis of the case has been suppressed. Under such circumstances, it cannot be said that the prosecution case has brought home the guilt of the accused beyond all reasonable doubt. The lower Court has failed to consider all the above aspects of the matter and in the opinion of the Court the accused are entitled for acquittal.

19. In the result, the appeal is allowed. The conviction and sentence imposed upon the appellants are set aside. It is reported that the appellants are on bail. Their bail bonds shall stand cancelled.

01.08.2005

bs/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Sessions Judge, Villupuram.
2.The Judicial Magistrate No.II, Villupuram.
3.-do- Thro' The Chief Judicial Magistrate, Villupuram.
4.The Inspector of Police, Valavanur Police Station.
5.The Superintendent, Central Prison, Cuddalore.
6.The District Collector,Villupuram.
7.The Director General of Police, Madras.
7.The Public Prosecutor, High Court, Madras.

1 cc to Mrs.Gita Asokan, Advocate, SR.32125

gm (co)

dv/5.8.05 Crl.A.No.806 of 1999

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